

CAUSE NO. 352-313325-19

CITY OF HURST, TEXAS  
Plaintiff,

VS.

CHARLES H. MERCER; OFELIA M.  
MERCER; and THE REAL PROPERTY  
KNOWN AS 450 E HURST BLVD,  
HURST, TEXAS 76053, *in rem*,  
Defendants.

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IN THE DISTRICT COURT

TARRANT COUNTY, TEXAS

\_\_\_\_ JUDICIAL DISTRICT

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**ORIGINAL VERIFIED PETITION, APPLICATION FOR TEMPORARY  
AND PERMANENT INJUNCTION, AND REQUESTS FOR DISCLOSURE**

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TO THE HONORABLE JUDGE OF THIS COURT:

COMES NOW the City of Hurst, Texas, and files this its Original Verified Petition, Application for Temporary and Permanent Injunction, and Request for Disclosure against Charles H. Mercer, Ofelia M. Mercer and the Real Property Known as 450 E Hurst Blvd. Hurst, Texas 76053, *in rem* (collectively, the “Defendants”), and in support thereof would respectfully show the Court the following:

**I.**

**DISCOVERY CONTROL PLAN AND REQUEST FOR DISCLOSURE**

1. The Discovery Process in this matter is intended be conducted pursuant to Level II of Rule 190 of the Texas Rules of Civil Procedure.
2. Defendants are requested to disclose, within fifty (50) days of service of this request, the information and material described in Rule 194.2 of the Texas Rules of Civil Procedure.

**II.**

**PARTIES**

3. The City of Hurst, Texas (“Hurst” or the “City”) is a home-rule municipal corporation situated in Tarrant County, Texas, incorporated and operating under the laws of the State of Texas.

4. Defendants Charles H. Mercer and Ofelia M. Mercer (collectively, the “Property Owners”) are individual Texas residents. Service of process may be made upon the Property Owners at their residence, 6101 Terrace Oaks Lane, Fort Worth, Texas 76112.

5. Defendant Real Property Known as 450 E Hurst Blvd. Hurst, Texas 76053 (the “Property”) is sued *in rem* pursuant to Tex. Loc. Gov’t Code § 54.018(b)(2). This is the legal address of real property on which Dakota Place Apartments (“Dakota Place”) is located. The Property may be served with process by serving the Property Owners, who own the Property.

### **III. VENUE AND JURISDICTION**

6. The City brings this cause of action to obtain temporary and permanent injunctive relief and to recover civil penalties against Defendants pursuant to Subchapter B of Chapter 54 of the Texas Local Government Code.

7. Venue is proper and this Court has jurisdiction pursuant to Sections 54.013 of the Texas Local Government Code. Pursuant to Section 54.014 of the Texas Local Government Code, this case is entitled to a preferential setting.

8. This cause of action is brought *in personam* as well as *in rem* pursuant to Tex. Loc. Gov’t Code § 54.018.

### **IV. FACTS**

9. Results of a real estate property data search of Tarrant Appraisal District records reflect that the Property is owned by Defendants Charles H. Mercer and Ofelia M. Mercer, who acquired the Property December of 2014.

10. The Property is zoned as multi-family residential.

11. Dakota Place is comprised of four separate apartment buildings, which together contain 81 units.
12. According to Tarrant Appraisal District records, the buildings at Dakota Place were constructed in 1964.
13. A 2019 structural assessment of the roofs indicates that all four buildings on the property are near the end of their serviceable life and need to be reroofed. That assessment was conducted by a third party engineering firm at the expense of the City and reported in its Roof and Structural Assessment dated February 8, 2019 (the “Roof Assessment”).
14. The Roof Assessment determined that the buildings have two roof systems. However, the City has no record of any legal, permitted work performed on the roof since original construction.
15. The Roof Assessment confirms and supports what the City has been directing the Property Owners to do for over three years: the roofs on the 55-year-old buildings need complete repair. The Property Owners have been disputing that fact for over three years. Despite the direction from City staff and the clear dangers reported in the Roof Assessment, the Property Owners refuse to fully repair the roofs.
16. The Property Owners’ unwillingness to fully address the dangerous conditions identified in the Roof Assessment continue an unfortunate pattern of deliberate avoidance of their landlord responsibilities. During the Property Owners’ ownership of the Property, the City has repeatedly received complaints on the living conditions at Dakota Place. That is coupled with the fact that the Property Owners have a history of undertaking illegal, unpermitted, and patchwork repairs.
17. On September 29, 2015, a Dakota Place tenant notified the City of a sewage back-up in a bathroom sink. The raw sewage backup had reportedly been ongoing for four weeks despite the multiple maintenance requests.

18. On November 26, 2015, City staff received a complaint from a tenant in Building 2 indicating that the roof was leaking. City staff confirmed that the manager of Dakota Place was aware of the problem as it had been ongoing for two weeks.

19. On December 13, 2015, the City received a complaint from a resident in building 2 of Dakota Place stating that the roof was continuing to leak and causing mold to grow on the ceiling.

20. On January 2, 2016, the City received a complaint from a resident in building 2 of Dakota Place stating that the severity of the roof leak had worsened to the point that the entire building was affected. The complaint alleged that there was massive flooding throughout the building resulting in a myriad of problems, including the removal of the wiring for the fire alarms. The remedy selected by the management of the Property was to attach a tarp to the roof for approximately four weeks in a haphazard attempt to keep water from entering the apartments.

21. January 21, 2016, is the first instance on record where the Property Owners were given written notice to replace the roof. On January 21, 2016, the City was forced to issue a written notice of violation to Defendant Charles Mercer regarding the continued roof leaks in Building 2. The notice instructed Charles Mercer to replace/repair the roof, to obtain a permit, and to call for an inspection. Instead of obtaining a permit and calling for an inspection, the Property Owners – consistent with their method of operation – performed temporary, illegal, and unpermitted work on the roofs.

22. Consequently, in May of 2016, to the surprise of no one, City staff once again received complaints about the roof leaking. This time, a large hole opened in the roof, flooding four units. The Property Owners, once again failing to promptly and effectively respond to emergency life safety matters, left the responsibility of cleaning the water and debris to the tenants.

23. In the subsequent inspection on May 12, 2016, City Staff observed that roof materials on building 2 had been damaged by water infiltration due to lack of maintenance. Because of years of neglect, water had penetrated to the bottom layer of the roof assembly, causing the building materials to weaken. City staff knew at that time that the roof was in danger of failing. A written notice was given to Charles Mercer requiring that a permit for replacement of the failing roof be filed within 10 days.

24. In June of 2016, Charles Mercer made an appeal to the City's Code of Appeals and Advisory Board (the "Advisory Board")<sup>1</sup> challenging the city official's determination that the roof on building 2 needed to be replaced. The Advisory Board denied the appeal. No further appeal was filed.

25. On July 11, 2016, the Property Owners were ordered to replace all roofs at Dakota Place.

26. In October of 2016, the Property Owners submitted a permit application to repair the roof decking. The proposed repairs fell short of complete repair of the roofs and thus the permit was denied.

27. Afterward, the Property Owners, through counsel, continued to challenge the necessity of roof replacement and further balked at requests for assessments to support their claims. In April of 2017, after completing a limited structural analysis and partial, illegal, and unpermitted work on the roofs, the Property Owners contended that the roof was safe and asserted that the City would have to engage an engineer at City's expense if additional testing was desired.

28. As expected, less than a year later in March of 2018, the City received a complaint from a resident of building 2 that the roof was leaking. The City officials inspected the Property. The

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<sup>1</sup> "Any person may appeal [to the Advisory Board] an interpretation of the electrical, building, residential, energy, mechanical, plumbing, fuel gas, property maintenance or fire codes or the disapproval or refusal of any permit authorized by any of such codes by filing a written notice of appeal with the official who made the interpretation or who refused or disapproved a permit." City of Hurst Code of Ordinances Sec. 5-1(b).

officials observed the roof leak causing significant damage, which required the occupant to vacate. Charles Mercer was once again sent a Notice of Violation.

29. In April of 2018, the Property Owners submitted an application for a roof construction permit. However, the application materials were insufficient. For example, the proposed design was hand-drawn and did not have the approval of a licensed engineer. Thus, the permit application did not provide all the required details and the City was unable to grant the permit application.

30. Slow progress toward the repair of the roof continued through 2018 as the Property Owners refused to submit an engineered-approved plan for complete replacement of the roof.

31. As suggested by the Property Owners, the City engaged a third party to conduct an in-depth assessment of Dakota Place. In January and February of 2019, three major assessments for Dakota Place Apartments were performed. A summary of those assessments are as follows.

- a. There were at least 775 code violations at the Property.
- b. Environmental analysis of select units identified odors atypical of a residential building, microbial growth, water damage resulting in partial ceiling collapse, stains on walls and ceilings, and substantial debris in the air.
- c. A comprehensive structural analysis of the roofing systems, which was reported in the Roof Assessment, indicated that all four buildings on the property are near the end of their serviceable life and need to be reroofed

32. In particular, the Roof Assessment made the following observations.

- a. On buildings 1, 3, and 4, the roofs are failing due to mechanical damage and neglect.
- b. On buildings 3 and 4, there are large areas of coating erosion from the elements leaving foam degraded by UV rays.

c. Building 2 contains a significant amount of water trapped between roof systems, which warrants an immediate re-roof.

33. A demand letter was sent on March 19, 2019, to the Property Owners' attorney along with the report of the assessments. The Property Owners still failed to bring the Property into compliance. Permit applications submitted by the Property Owners were not approved by a structural engineer and continued to represent only partial repairs.

34. On August 6, 2019, Hurst, through counsel, forwarded an internal memo to counsel for Property Owners that provided a detailed explanation of the current violations of the City of Hurst Code of Ordinances.

35. On August 7, 2019, the City of Hurst Building Official served a notice on Charles Mercer that declared the buildings on the Property substandard as described in Chapter 5, Article VII, Section 5-295 of the City's Code of Ordinances (the "Substandard Notice"). The Substandard Notice included a list of deficiencies along with an order to repair and rehabilitate the required improvements of the Property. The Substandard Notice granted 15 days to apply for permits to repair and rehabilitate the building and 90 days to complete the work once the permits were issued. The Property Owners did not apply for permits in the requisite time frame.

36. After a public hearing on September 24, 2019, the City of Hurst City Council declared the Property to be substandard and ordered that the structures on the Property be repaired, removed, or demolished such that the property is in compliance with Chapter 5 of the City of Hurst Code of Ordinances no later than October 24, 2019. No appeal has been filed regarding the City Council's September 24, 2019, Order and that Order is now final.

37. To date, the Property Owners have failed to obtain all required permits to repair the deficiencies and bring it into full compliance with the Hurst Code of Ordinances.

V.  
**CAUSE OF ACTION – TEX. LOC. GOV'T CODE CHAPTER 54**

38. These causes of action arise under Subchapter B of Chapter 54 of the Texas Local Government Code.

39. The Property Owners' steadfast refusal to make the necessary repairs places the health and safety of each of the Dakota Place residents at risk every day. Hurst has no choice but to pursue all legal remedies. While the Property Owners have shown an indifference to the dangerous conditions identified in the Roof Assessment, the City cannot in good conscience stand by while the Property Owners choose to do nothing.

40. Pursuant to Tex. Loc. Gov't § 54.012, this action is brought for the enforcement of an ordinance:

- a. for the preservation of public safety, relating to the materials or methods used to construct a building or other structure or improvement;
- b. relating to the preservation of public health or to the fire safety of a building or other structure or improvement;
- c. relating to dangerously damaged or deteriorated structures or improvements;
- d. relating to conditions caused by accumulations of refuse, vegetation, or other matter that creates breeding and living places for insects and rodents; and
- e. relating to the discharge of a pollutant into a sewer system.

41. The Defendants are in violation of the following Ordinances as stated in the August 6, 2019, memo sent to the Property Owners:

**SECTION 108 UNSAFE STRUCTURES AND EQUIPMENT**

“108.1 General. When a structure or equipment is found by the code official to be unsafe, or when a structure is found unfit for human occupancy, or is found unlawful, such structure shall be condemned pursuant to the provisions of this code.

108.1.1 Unsafe structures. An unsafe structure is one that is found to be dangerous to the life, health, property or safety of the public or



the occupants of the structure by not providing minimum safeguards to protect or warn occupants in the event of fire, or because such structure contains unsafe equipment or is so damaged, decayed, dilapidated, structurally unsafe or of such faulty construction or unstable foundation, that partial or complete collapse is possible.

108.1.3 Structure unfit for human occupancy. A structure is unfit for human occupancy whenever the code official finds that such structure is unsafe, unlawful or, because of the degree to which the structure is in disrepair or lacks maintenance, is insanitary, vermin or rat infested, contains filth and contamination, or lacks ventilation, illumination, sanitary or heating facilities or other essential equipment required by this code, or because the location of the structure constitutes a hazard to the occupants of the structure or to the public.”

**Sec. 5-527 of the City of Hurst Code of Ordinances states: Owner’s and Manager’s General Responsibilities.**

“The owner and manager of the premises shall maintain the structures and premises in compliance with these minimum standards. A person shall not occupy or permit another person to occupy premises which are not in a sanitary and safe condition and which do not comply with the requirements of this chapter. The standards of this chapter are intended to complement the requirements of any other applicable code or ordinance of the City of Hurst, and shall not be deemed to lower any more restrictive standard required by the codes at time of original construction or subsequent remodeling. The duty of an owner and manager to maintain premises in compliance with this chapter is not affected by any duty this chapter creates upon the occupants thereof, even if the owner or manager has, by agreement, imposed upon the occupants the duty of maintaining the premises and complying with this chapter.”

**Section 5-296 of the City of Hurst Code of Ordinances states:**

“Sec. 5-296. - Notices and orders of building official.  
(a) Commencement of proceedings. Whenever the building official has inspected or caused to be inspected any building, and has found and determined that such building is:

- (1) Dilapidated, substandard, or unfit for human habitation and a hazard to the public health, safety, and welfare;
- (2) Regardless of its structural condition, unoccupied by its owners, lessees, or other invitees and is unsecured from unauthorized entry to the extent that it could be entered or cause by vagrants or other

uninvited persons as a place of harborage or could be entered or used by children; or

(3) Boarded up, fenced, or otherwise secured in any manner if:

a. The building constitutes a danger to the public even though secured from entry; or

b. The means used to secure the building are inadequate to prevent unauthorized entry or use of the building in the manner described by subsection (a)(2) hereof; he shall commence proceedings to cause the repair, rehabilitation, vacation or demolition of the building.”

42. Pursuant to Sections 54.016 and 54.018 of the Texas Local Government Code, the City requests temporary and permanent injunctive relief, ordering the Property Owners to remedy or repair the conditions of the Property and to bring the Property into compliance with the Code of Ordinances. Such relief is warranted due to the substantial danger of injury or an adverse health impact to adjacent property owners and the community as a whole. *See* Tex. Loc. Gov’t Code § 54.016(a). It is not necessary for the City to prove that another adequate remedy or penalty for a violation does not exist or to show that prosecution in a criminal action has occurred or has been attempted. *See Id.* § 54.016(b).

43. In the alternative, if the Property Owners fail to abate the code violations, the City seeks an order to compel the demolition of the structure pursuant to Tex. Loc. Gov’t Code § 54.018(a).

44. Furthermore, pursuant to Section 54.017 of the Texas Local Government Code, the City requests civil penalties not to exceed \$1,000 per day for each violation of the aforementioned Ordinances.

45. Pursuant to Section 54.018 of the Texas Local Government Code, the City requests that any judgment requiring the demolition or repair of the structure be made against the Defendant Real Property, as wells as the Property Owners.

**VI.**  
**APPLICATION FOR TEMPORARY RESTRAINING ORDER,  
TEMPORARY INJUNCTION, AND PERMANENT INJUNCTION**

46. Pursuant to Sections 54.016 and 54.018 of the Texas Local Government Code, the City requests temporary and permanent injunctive relief, ordering the Property Owners to remedy or repair the conditions on the Property and to bring the property into compliance with the Code of Ordinances. Such relief is warranted due to the substantial danger of injury or an adverse health impact to tenants, adjacent property owners, and the community as a whole. *See* Tex. Local Gov't Code § 54.016(a). It is not necessary for the City to prove that another adequate remedy or penalty for a violation does not exist or to show that prosecution in a criminal action has occurred or has been attempted. *See Id.* § 54.016(b). If the Property Owners fail to abate the code violations within thirty days from the date of the order, the City seeks an order to compel the demolition of the structure pursuant to Tex. Local Gov't Code § 54.018(a).

**VII.**  
**PRAYER**

**WHEREFORE, PREMISES CONSIDERED,** Hurst prays that the Court:

47. Grant a temporary injunction requiring the Property Owners to discontinue their violations of the Code of Ordinances as described herein;

48. Grant a permanent injunction enjoining the Property Owners from continuing their violations of the Code of Ordinances as described herein;

49. Grant an order compelling the Property Owners to repair or demolish the structures on the Property, or in the alternative, if the code violations are not abated within 30 days from the date of the order, execute an order that authorizes Hurst to enter the Property to repair or demolish the

structures at the sole cost of the Property Owners and to impose a lien on the property for the collection of such costs together with 10% interest from the date of completion;

50. Impose a civil penalty against Defendants in the amount of \$1,000 per day for each day for each violation on the Property;

51. Enter an *in rem* final judgment in favor of the City against the Defendant Real Property so that any future persons acquiring interest in the Defendant Real Property takes it subject to the orders of the Court; and

52. Award the City its costs incurred including attorney fees and for such other and further relief, in law and in equity, to which Hurst may show itself justly entitled.

Respectfully submitted,

**BOYLE & LOWRY, L.L.P.**

*/s/ Matthew L. Butler*

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**ATTORNEYS FOR PLAINTIFF  
CITY OF HURST**

**VERIFICATION**

**STATE OF TEXAS**

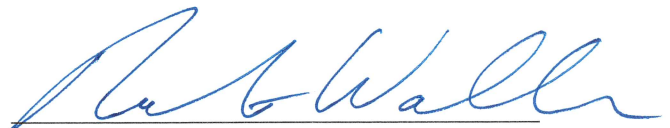
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**COUNTY OF TARRANT**

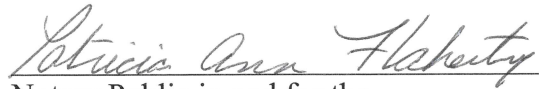
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BEFORE ME, the undersigned Notary Public on this day personally appeared Robert Wallace, Building Official for the City of Hurst, who being by me duly sworn on his oath, deposed and said that he has read the above and foregoing Plaintiff's Verified Original Petition and Request for Temporary and Permanent Injunction and that every factual allegation regarding City of Hurst Code of Ordinance violations contained therein are within his personal knowledge and are true and correct.



Robert Wallace, CBO  
Building Official  
City of Hurst

Subscribed and sworn before me this 15<sup>TH</sup> day of NOVEMBER, 2019



Notary Public in and for the  
State of Texas

